

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

GLEN MORINAKA,

Respondent.

Case No. AC-2004-9

OAH No. L2004040078

DECISION FOLLOWING
ORDER GRANTING RECONSIDERATION

On January 5, 2005, Administrative Law Judge Timothy S. Thomas, Office of Administrative Hearings, heard this matter in Los Angeles, California.

Gillian E. Friedman, Deputy Attorney General, represented complainant Carol Sigmann, Executive Officer of the California Board of Accountancy.

John M. Williamson, Attorney at Law, represented Glen Morinaka (hereinafter respondent).

The matter was submitted on January 5, 2005. The California Board of Accountancy ("Board") declined to adopt the Proposed Decision and issued an Order of Nonadoption on March 29, 2005. After reviewing the entire record, including transcripts and exhibits in addition to written arguments submitted by the parties, the Board issued a Decision After Nonadoption with an effective date of September 8, 2005.

On September 6, 2005, the Board issued a 30-day stay of this decision pursuant to Government Code 11521. On or about September 9, 2005, Deputy Attorney General Gillian E. Friedman filed a Petition for Reconsideration on behalf of complainant Carol Sigmann. On September 29, 2005, the Board issued an Order Granting Reconsideration. That Order also requested the parties to submit written argument addressing whether the legal conclusions were supported by the record.

The matter came before the Board at its regularly noticed meeting held on November 17 and 18, 2005 in Sacramento, California.

Written argument being received by both parties, the record, including the transcript and exhibits of said hearing, having been read and considered by the Board, pursuant to Government Code Section 11523, the Board hereby makes the following decision and order:

FACTUAL FINDINGS

1. Carol Sigmann filed the Accusation in her official capacity as Executive Officer of the board.

2. Respondent is a Certified Public Accountant who was issued Certificate number 48024 on May 29, 1987, by the board. Respondent graduated from the University of Utah in 1977, with a degree in accounting, and following a brief career as an Internal Revenue Service auditor, was a partner in a private accounting firm from 1977 to 2001. Since that time he has been self-employed as a CPA, working out of his home. Respondent's practice consists of business tax preparation and "management assistance services." Respondent testified that he does not perform audits. He is a resident of Monterey Park, California, where he resides with his wife and two children.

3. In approximately July of 2001, respondent became associated with a company called Gas & Oil Technologies, Inc. ("Gas & Oil"), a Delaware corporation, having been introduced to its CEO, Ingrid Gass, several months earlier. Gas & Oil was run by four individuals, including Gass, respondent, who became chairman of the board of directors, attorney John Williamson who is representing respondent in this matter and Sam Kogan, who served as company president. Gass organized Gas & Oil in 2000, and owns controlling interest in the company.

4. Gas & Oil was formed for the purpose of acquiring patents and developing gas and oil projects. It had an initial capitalization of \$5,000 from Ingrid Gass. Gas & Oil and formed a partnership or joint venture with an individual named P. A. Makarav. Makarav contributed a Russian patent for a cleaner and cheaper process to convert crude oil into petrochemicals.

5. The Russian patent was acquired by Gas & Oil in the form of a certificate which on its face stated, "The market cost of the rights on the inventions: \$21,750,000." The value was based on an appraisal done in Russia by the International Scientific Foundation. No independent verification, however, as to the value of this patent was obtained outside of Russia. (SEC hearing transcript page 44 (hereinafter "SEC 44").) Thereafter, this value was "booked" by Gas & Oil, from an accounting standpoint, as "other income."

6. On October 15, 2001, the company made its initial filing with the Securities and Exchange Commission, in order to qualify the company to sell stock publicly. The SEC filing (Form S-1) sought approval for an Initial Public Offering (IPO) to raise \$60,000,000. It listed an individual named John Perry as Chief Financial Officer (CFO), but Mr. Perry resigned in December 2001, without having performed any substantive services for the company. Respondent became the CFO at that time.

7. Respondent testified that he had never practiced accounting before the SEC and had no special experience or training in SEC accounting or filings. Prior to respondent's involvement in the company, Gas & Oil had retained the services of CPA Kurt Saliger, who conducted audits of the company books for the quarters ending December 30, 2000, and June 30, 2001. Saliger was licensed to provide audited financial statements to the SEC. A "Report of Certified Public Accountant," dated October 11, 2001, signed by Kurt D. Saliger, CPA, accompanied the balance sheets included in the filing that characterized the value of the patent as "other income."

8. The SEC immediately questioned the accounting propriety of showing the patent as "income" in the amount of \$21,750,000 on the company books.¹ It initiated a formal investigation entitled "*In the Matter of GAS AND OIL TECHNOLOGIES, INC.*" As part of that investigation, the SEC took the testimony of Respondent under oath on January 22, 2002.

9. The SEC questioned the representation made to the public in the Form S-1 that Gas & Oil was capitalized beyond the \$5,000 it had in the bank. Eventually, it concluded that the patent was not worth anything, absent a domestic appraisal, or until the company generated income. The regulators also took issue with the statement in the Gas and Oil filing which stated that "we develop products in the United States and sell them 'worldwide,'" In fact, the company was not producing or selling anything at that point in time.

10. Respondent did cooperate with the SEC investigation, and provided 1,500 pages of documents. After being notified by the SEC that there was a problem with the filing, the company filed with SEC a notice to stop the Form S-1 process.

11. The SEC also initiated a separate action entitled: *In the Matter of Glen Morinaka, CPA.* Respondent, on December 16, 2002, timely reported the action and imminent order of the SEC to the Board as required by the rules of his profession. On February 13, 2003, this action was resolved by way of a stipulated settlement which resulted in the issuance by the SEC of a Cease and Desist Order. (A true and correct copy of this Order is incorporated herein by reference as attachment "A".) In addition to an order to cease and desist from committing any violations of the Securities Act of 1933, the SEC denied Respondent the privilege of appearing or practicing before the SEC as an accountant. The order acknowledged that respondent did not admit to the truth of the findings contained therein. It reads: "...Respondent consents to the entry of this Order Making Findings and Imposing a Cease-and-Desist Order...."

12. Because Respondent had been disciplined by the SEC and was denied the privilege of practicing before that body as an accountant, the Board initiated an administrative action to revoke Respondent's license on or about March 2, 2004.

13. Respondent has not been the subject of any prior disciplinary action by the Board.

¹ According to respondent, it was initially suggested by the SEC that the patent be booked under "retained earnings" rather than income. After further review, the SEC also questioned the value placed on the patent.

14. At the hearing before the administrative law judge, Respondent sought to minimize his degree of responsibility with respect to the Oil & Gas SEC filing. He repeatedly testified that he was acting in the capacity as a bookkeeper and was not performing any accounting work. Respondent also testified that his main function with regard to the S-1 filing was to provide Mr. Saliger with bank statements, the general ledger, the trial balance, adjustments, and copies of contracts, including the contract with Makarav.

15. However, in his sworn testimony before the SEC, respondent presented a completely different scenario about his level of involvement.

- Q. Okay. In the S-1, [Mr. Perry] was listed as the Chief Financial Officer?
A. Yes, he was.
Q. Okay. So up to that point in time, I think it was filed on October 15th of 2001.
A. Correct. He was more of an advisor, he didn't participate in any of the preparation.
Q. He didn't do any of the accounting work?
A. No, not at all.
Q. Who did?
A. I did, on QuickBooks. (SEC Hearing transcript at 13 – 14 (hereinafter “SEC 13 – 14”).)

16. Respondent also testified at the administrative hearing as follows:

- Q. And did you have any accounting responsibilities towards the company?
A. None whatsoever. (Administrative hearing transcript, p. 35, lines 1 – 3 (hereinafter “Admin: 35: 1 – 3”).)

Again, this was in stark contrast to the following dialog he had with the SEC investigators while under oath.

- Q. ... [D]id you read this [i.e. Form S-1] before it was filed?
A. Yes.
Q. Under “Revenue,” it says “other income for the nine months, period ending September 30th, 2001, was \$21,750,000.”
A. Right.
Q. So, again, the reader of the financial statement looks at this and says, “wow, great revenues.”
Then, under “Liquidity and capital resources,” you’ve got “net cash used in investing activities for the nine months ended September 30th, 2001, was \$21.7 million.” Is that true?
A. “Net cash” – say that again?
Q: “Net cash used in investing” –

* * *

A. Okay. It's just from the statement of cash flow in that the net cash shows up under an investment and that it wasn't income.

It was shown as income coming through the net cash through the cash-flow statement.

Q. But it wasn't cash.

A. It was net cash that came through the – well, if you look a statement of cash flow, you start with net income and then you go through all of the necessary states.

And then it ends up net cash at the end of the period, which is part of the investment activities. And I'm not arguing GAP², but, I mean, it says "net cash."

Q. Right. (SEC 63 – 65.)

17. Another significant area of contradictory testimony involved Respondent's level of involvement in the preparation of the Oil and Gas financial statements. At the SEC hearing, he testified as follows.

Q. Who prepared the financial statements that were including in the [SEC] filing?

A. We prepared the financials, Mr. Salinger did the audits, and then we included it within the filing, is that what you mean?

Q. Yeah. Did Mr. Salinger make any changes to the financial statements?

A. He did a December audit and he did a June audit, he audited that, he did a review on September, he sent it back to us, we gave it to the Edgar person who puts it in the Edgar form, and they submitted it to the SEC.

Q. Did he make any adjusting journal entries to any of the financial statements?

A. Not that I – no, he did not. (SEC 67.)

At the administrative hearing, Respondent flatly stated that he "did not prepare the financial statements." (Admin: 18: 18 – 19.) When asked on direct examination what he meant when he testified before the SEC that "*we* prepared the financials," Respondent gave the following non-responsive answer:

A. At the hearing with the SEC, we were explaining what the procedures in which the source documents were accumulated. They were transmitted to Mr. Salinger. He accumulated the documentation again with the guidelines with the SEC. *He was the person responsible to put the financial statement together, so it could be submitted with the SEC filing.* (Admin: 19:22 – 20:3.)

"Putting the financial statement together" is not the same as *preparing* its *contents*. Again, recall what Respondent testified at the SEC hearing about Mr. Salinger's involvement.

Q. Did he make any adjusting journal entries to any of the financial statements?

A. Not that I – no, he did not. (SEC 67.)

² "GAP" as used in this transcript stands for General Accepted Accounting Principles which is normally abbreviated as "GAAP."

18. Respondent likewise contradicted himself when it came to the critical footnote in the Form S-1 which valued the Gas and Oil patent at \$21,750,000. At the SEC hearing he testified:

In *our* footnote, we just say that the patents were valued at 21 million. I don't think we went into a big discussion on that. (SEC 61 [Emphasis added].)

* * * *

* * * *

Q. Okay. Who prepared the footnotes?

A. I did. (SEC 67.)

When asked to explain his involvement with the foot notes at the administrative hearing, he gave yet another evasive answer.

Q. Okay. Now, you're also asked the question: "Okay, who prepared the foot notes?" And your response is: "I did."

A. We accumulated -- "we" meaning the principals of the company accumulated the information for the footnotes. We transmitted it to Mr. Salinger. We assumed it was just for disclosure purposes. But eventually it became a part in the footnotes of the financial. (Admin: 21: 2 - 9.)

19. Respondent testified at the administrative hearing that he "volunteered" to become the Chief Financial Officer. (Admin 20:24.) In his written arguments submitted to the Board regarding the nonadoption of the ALJ's proposed decision, he stated that he did not "receive any compensation for professional services as an accountant in any acts alleged in the SEC complaint." (Respondent's Argument for Adoption of Proposed Decision at p. 2, para. 4.)

But at the SEC hearing he testified under oath that he described how he was putting in "sweat equity." Specifically, he stated that:

But at this point it's just strictly sweat equity to become a part of the company, to where if the company becomes profitable eventually maybe the shares will make money.

And then at that time, the company will be able to pay salaries and I'll become a salaried employee. But until then, I have to do my accounting practice.

* * * *

And John is an attorney and I'm a CPA, and Ingrid and Sam are business people that have come upon some opportunity to put something together, and that's what we're doing.

I mean, and that's why we haven't paid big accounting fees or big legal fees, because we didn't have resources.

And, I mean, the old entrepreneur of sweat equity exists, and we're perfect examples of it. (SEC 76.)

LEGAL CONCLUSIONS

1. Complainant has the burden to prove by clear and convincing evidence that respondent has subjected himself to discipline by his actions. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

2. In the First Cause for Discipline, complainant alleged that Respondent is subject to disciplinary action pursuant to Business and Professions Code Section 5100 which provides in part that:

[T]he board may revoke, suspend, or refuse to renew any permit or certificate . . . for unprofessional conduct that includes

* * * *

(h) Suspension or revocation of the right to practice before any governmental body or agency.

* * * *

(l) The imposition of any discipline, penalty, or sanction on . . . any . . . holder of a permit, certificate, license, or other authority to practice in this state.

3. The legislative intent in allowing the board to discipline a licensee who has been sanctioned by another governmental agency is analogous to the rationale for allowing the Board to take disciplinary action based on a criminal conviction. (See *Arenstein v. California State Board of Pharmacy* (1968) 265 Cal.App.2d 179.) As in a criminal matter, respondent was provided due process in the SEC proceedings and was represented by counsel.

4. Also illustrative of this principle is *Marek v. Board of Podiatric Medicine*, 16 Cal. App. 4th 1089, 20 Cal. Rptr. 2d 474 (1993). There, two doctors of podiatric medicine entered into a consent decree with the Nevada State Board of Podiatry. They, like Respondent in this case, did not admit to the truth of any of the allegations. Based on this decree, the Nevada Board revoked their licenses. The California Board of Podiatric Medicine then sought to discipline these licensees based solely on the existence of this decree. The administrative law judge dismissed the accusation because there was "no public interest which would justify imposing any discipline against [the doctors] based solely on the Nevada discipline." (16 Cal. App. 4th at 1095.) The California Board refused to adopt this decision and revoked the doctors' licenses. The California Court of Appeal upheld this action finding that:

Permitting the disciplinary action in California based solely on the fact of disciplinary action in another jurisdiction is consistent with the purpose of the Medical Practice Act . . . to protect the state's citizens by regulation of the professional conduct of its health practitioners. (*Id.* at 1097 - 98.)

5. As a matter of law, Respondent has been denied the privilege of practicing as an accountant before the SEC and was the subject of a Cease and Desist Order as to any violations of Section 17(a) of the Securities Act. This action by the SEC is not disputed and is by itself cause for discipline under Sections 5100(h) and 5100(l) of the Business and Professions Code.

6. Under the Board's Disciplinary Guidelines, the minimum penalty for violation of either Section 5100(h) or 5100(l) is revocation stayed and three years probation. The maximum penalty is revocation. In determining what discipline should be imposed upon respondent's license, both mitigating and aggravating factors must be weighed. The mitigation factors in this case are respondent's cooperation with the SEC during its investigation, reporting the SEC order to the board, and lack of a disciplinary record with the board.

7. These mitigating factors are, however, far outweighed by aggravating circumstances. Respondent's testimony before the SEC and before the administrative law judge cannot be reconciled. It was contradictory, less than candid and particularly self-serving when he was faced with the reality that his license to practice as a CPA in California was in jeopardy. He unhesitatingly admitted during the SEC hearing that he prepared the footnote in the Form S-1 valuing the Russian patent at \$21 million. When confronted with this admission at the administrative hearing, he could not directly deny it, but instead sought to shift the blame with the disingenuous statement that "we accumulated" the footnotes.

8. The same problem exists with respect to Respondent's contradictory explanation about who prepared the financial statements. At the SEC hearings it was "we." At the administrative hearing, his non-responsive answer was that Mr. Salinger "accumulated the documentation."

9. Respondent's repeated statements at the administrative hearing that he did no accounting work but merely acted as a bookkeeper was directly contradicted with numerous admissions made to the SEC describing in detail his accounting work for Gas & Oil in preparing the financial information and statements associated with its Form S-1 and the Russian patent.

10. Thus, another major aggravating factor is Respondent's lack of credibility. This was further illustrated by his representation before the administrative hearing that he was a "volunteer" and worked for no income versus his testimony to the SEC that he was accumulating "sweat equity" with the expectation of acquiring a future salary plus an ownership or stock interest in Gas & Oil.

11. The third aggravating factor is the potential for tremendous consumer harm arising out of Respondent's employment and accounting work at Gas & Oil. A Russian patent with an unknown present worth was valued at more than 21 million dollars and reported as "other income" for Gas & Oil. That figure instead of the \$5,000 in real capital Gas & Oil owned was to serve as the basis for a 60 million dollar stock offering.

12. On balance therefore, these aggravating factors clearly justify imposition of the maximum penalty in this case which is revocation of Respondent's CPA license.

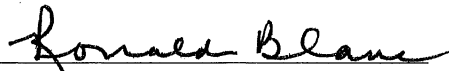
ORDER

Based upon Legal Conclusion 1 through 12, the Accusation against respondent Glen Morinaka is sustained and his license is revoked.

It is so ordered.

The effective date of this Order is January 13, 2006

DATED: December 14, 2005


RONALD BLANC
President
California Board of Accountancy

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

GLEN MORINAKA,

Respondent.

Case No. AC-2004-9

OAH No. L2004040078

**ORDER GRANTING RECONSIDERATION
AND REQUEST FOR WRITTEN ARGUMENT**

On January 5, 2005, Administrative Law Judge Timothy S. Thomas, Office of Administrative Hearings, heard this matter in Los Angeles, California. Gillian E. Friedman, Deputy Attorney General, represented complainant Carol Sigmann, Executive Officer of the California Board of Accountancy. John M. Williamson, Attorney at Law, represented Glen Morinaka.

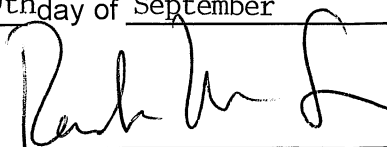
The matter was submitted on January 5, 2005. The California Board of Accountancy ("Board") declined to adopt the Proposed Decision and issued on March 29, 2005, an Order of Nonadoption of Proposed Decision. A Request for Written Argument and Notice of Receipt of Transcript was issued on May 4, 2005. The Board issued its Decision After Nonadoption on August 8, 2005 with an effective date of September 8, 2005. On September 6, 2005, the Board issued a Stay of the Effective Date of the Decision After Nonadoption. On September 9, 2005, Deputy Attorney General Gillian E. Friedman, on behalf of her client, filed a Petition for Reconsideration of the Decision After Nonadoption.

ORDER

The Board hereby issues this order granting the Petition for Reconsideration. The parties may submit written argument addressing whether the legal conclusions in the Decision After Nonadoption are supported by the record. Written argument is due by November 2, 2005.

The effective date of the Decision After Nonadoption dated August 8, 2005 is stayed. This stay shall remain in effect until the Board issues its decision after reconsideration.

IT IS SO ORDERED this 29th day of September, 2005.



Renata M. Sos, President
FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

GLEN MORINAKA

CPA Certificate No. 48024

Respondent

Case No. AC-2004-9

OAH NO. L-20040400078

ORDER OF STAY OF EXECUTION OF DECISION

Pursuant to Section 11519 of the Government Code, the Decision dated August 8, 2005, entered by the Board in the above-entitled matter is stayed for thirty (30) days from the effective date of the Decision. The California Board of Accountancy will decide whether to order a reconsideration pursuant to Section 11521 of the Government Code in the above-entitled matter.

IT IS SO ORDERED this 6th day of September 2005.



Carol Sigmann, Executive Officer

For The CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

GLEN MORINAKA,

Respondent.

Case No. AC-2004-9

OAH No. L2004040078

DECISION AFTER NONADOPTION

On January 5, 2005, Administrative Law Judge Timothy S. Thomas, Office of Administrative Hearings, heard this matter in Los Angeles, California.

Gillian E. Friedman, Deputy Attorney General, represented complainant Carol Sigmann, Executive Officer of the California Board of Accountancy.

John M. Williamson, Attorney at Law, represented Glen Morinaka (hereinafter respondent).

The matter was submitted on January 5, 2005. The California Board of Accountancy ("Board") declined to adopt the Proposed Decision and issued on March 29, 2005, Order of Nonadoption of Proposed Decision. A Request for Written Argument and Notice of Receipt of Transcript was issued on May 4, 2005. Written argument being received by both parties, the entire record, including the transcript and exhibits of said hearing, having been read and considered by the Board, pursuant to Government Code Section 11517, the Board hereby makes the following decision and order:

FACTUAL FINDINGS

1. Carol Sigmann filed the Accusation in her official capacity as Executive Officer of the board.

2. Respondent is a Certified Public Accountant who was issued Certificate number 48024 on May 29, 1987, by the board. Respondent graduated from the University of Utah in 1977, with a degree in accounting, and following a brief career as an Internal Revenue Service auditor, was a partner in a private accounting firm from 1977 to 2001. Since that time he has been self-employed as a CPA, working out of his home. Respondent's practice consists of business tax preparation and "management assistance services." Respondent testified that he does not perform audits. He is a resident of Monterey Park, California, where he resides with his wife and two children.

3. In approximately July of 2001, respondent became associated with a company called Gas & Oil Technologies, Inc. (hereinafter Gas & Oil), a Delaware corporation, having been introduced to its CEO, Ingrid Gass, several months earlier. Gas & Oil was run by four individuals, including Gass, respondent, who became chairman of the board of directors, attorney John Williamson who is representing respondent in this matter and Sam Kogan, who served as company president. Gass organized Gas & Oil in 2000, and owns controlling interest in the company. On October 15, 2001, the company made its initial filing with the Securities and Exchange Commission (SEC), in order to qualify the company to sell stock publicly.¹ It listed an individual named John Perry as Chief Financial Officer (CFO), but Mr. Perry resigned in December 2001, without having performed any substantive services for the company. Respondent became the CFO at that time. The Board disagrees with the Proposed Decision's description of respondent as a "bookkeeper" for the company after the resignation of Mr. Perry. The SEC Order made a specific finding that respondent prepared financial statements on behalf of Gas & Oil. (Page 2 of Order) Additionally, the following excerpt from the SEC transcript provides clear evidence that respondent was acting as an accountant when assisting in the preparation of the filing.

Mr. Korb (SEC Investigator) is asking the questions:

Question: Did you read this before it was filed?

Answer: Yes.

Question: Under "Revenue," it says "other income for the nine months, period ending September 30th, 2001, was \$21,750,000."

Answer: Right.

Question: So, again, the reader of the financial statement looks at this and says, "wow, great revenues." Then, under "Liquidity and capital resources," you've got "net cash used in investing activities for the nine months ended September 30th, 2001, was \$21.7 million." Is that true?

Answer: "Net cash" – say that again?

Question: "Net cash used in investing" –

* * *

Answer: Okay. It's just from the statement of cash flow in that the net cash shows up under an investment and that it wasn't income. It was shown as income coming through the net cash through the cash-flow statement.

Question: But it wasn't cash.

Answer: It was net cash that came through the – well, if you look a statement of cash flow, you start with net income and then you go through all of the necessary states. And then it ends up net cash at the end of the period, which is part of the investment activities. And I'm not arguing GAP², but, I mean, it say "net cash."

Question: Right.

¹ The SEC filing (Form S-1) sought approval for an Initial Public Offering (IPO) to raise \$60,000,000.

² "GAP" as used in this transcript stands for General Accepted Accounting Principles which is normally abbreviated as "GAAP."

Answer: That's where we've got a problem with GAP and the way it's presented. But if you look on it, it says, "net income," which we would have had 8 million or 13 million, and then the investing activities and financing activities, and then the net cash was zero, which, in this case, the investing activity – well, let's look at this cash flow. (SEC Transcript pages 63-65)

4. Gas & Oil, which had an initial capitalization of \$5,000 from Ingrid Gass, was formed for the purpose of acquiring patents and developing gas and oil projects. Gas & Oil formed a partnership or joint venture with an individual named P. A. Makarav, who contributed a Russian patent to the venture. The patent involves a new, cleaner and cheaper process to convert crude oil into petrochemicals, and Gas & Oil plans to build factories in this country and produce petrochemicals using the patented process. Respondent testified that as of 2002, a prototype factory was being built in Hungary, not Russia as stated in the Proposed Decision, and the first U.S. factory is to be built in Bakersfield, California. Makarav is to receive royalties from sales of the petrochemicals.

5. The Russian patent was acquired by Gas & Oil in the form of a certificate, which on its face stated, "The market cost of the rights on the inventions: \$21,750,000." The value was based on an appraisal done in Russia by the International Scientific Foundation. Respondent testified at the hearing that Gass, who had contacts in Russia, dispatched consultants to that country to verify the value of the patent. As to verifying the value of the patent outside Russia, when respondent was asked if Gas & Oil attempted to find someone in the United States to value the patent, respondent replied, "No, meaning that we didn't at that point have the resources to secure an independent appraisal company just by the fact of how much it would cost. But we are open to – I mean, in reference to any professional services, you know, as soon as we get going we'll comply with whatever's necessary in reference to – even with the Big Five or Big Four after Anderson." (SEC transcript page 44) Thereafter, this value was "booked" by Gas & Oil, from an accounting standpoint, as "other income," and added that amount to the company's capitalization picture.

6. The SEC immediately questioned the accounting propriety of showing the patent as "income" on the company books.³ The SEC later questioned the filing's representation to the public that Gas & Oil was capitalized beyond the \$5,000 it had in the bank. Eventually, the federal regulators concluded that the patent was not worth anything, absent a domestic appraisal, or until the company generated income. The regulators also took issue with the SEC filing in that it represented that "we develop products in the United States and sell them 'worldwide,'" when in fact the company was not producing or selling anything at that point. Respondent did cooperate with the SEC investigation, and provided 1,500 pages of documents. After being notified by the SEC that there was a problem with the filing, the company filed with SEC a notice to stop the S-1 form process. The Proposed Decision mistakenly concluded that "no individual or entity had inquired about the S-1 filing, or offered to invest." On the contrary, the SEC transcript contains this exchange:

³ According to respondent, it was initially suggested by the SEC that the patent be booked under "retained earnings" rather than income. After further review, the SEC also questioned the value placed on the patent.

Mr. Korb (SEC Investigator) is asking the questions.

Question: The S-1 has been marked as Exhibit 3. And looking at page 29, it does say there that "we develop products in the United States and sell them worldwide."

Answer: That's what's going to happen, the technology in the factories, they will be -- there's components that you can make -- the prototype is, for example, development. The box and the vehicle that is will be put onto, I mean, it will be all United States products.

Question: Yeah.

Answer: So it's not like --

Question: I'm just saying, to the reader of this it appears that, wow, they're selling this all over the world, you know, and, in fact, it hasn't happened yet.

Answer: Well, one of the comments is, we were maybe too descriptive in our presentation of the components, which we'll review when we do the next amendment.

Question: Okay.

Answer: If we're a little too verbose, then we'll try to amend that.

Question: Yeah. The other issue is some financial Internet sites have picked up on your filing and they've indicated here's this company, it's a start-up company, they're trying to raise \$60,000,000 and they already have \$21,750,000 in income. (SEC Transcript pages 61-62)

Respondent went on to say that he has no control over the Internet which is correct. However, he had control over what was filed with the SEC and should have known how misleading the filing would be to the public.

7. Respondent testified that he had never practiced accounting before the SEC and had no special experience or training in SEC accounting or filings. Prior to respondent's involvement in the company, Gas & Oil had retained the services of CPA Kurt Saliger, who conducted audits of the company books for the quarters ending December 30, 2000, and June 30, 2001. Saliger was licensed to provide audited financial statements to the SEC. Respondent testified at the hearing that his main function with regard to the S-1 filing was to provide Saliger with bank statements, the general ledger, the trial balance, adjustments, and copies of contracts, including the contract with Makarav. However, at his interview with the SEC, respondent stated otherwise when asked who prepared the financial statements that were included in the filing.

Answer: We prepared the financial, Mr. Salinger did the audits, and then we included it within the filing, is that what you mean?

Question: Yeah. Did Mr. Salinger make any changes to the financial statements?

Answer: He did a December audit and he did a June audit, he audited that, he did a review on September, he sent it back to us, we gave it to the Edgar person who puts it in the Edgar form, and they submitted it to the SEC.

Question: Did he make any adjusting journal entries to any of the financial statements?

Answer: Not that I – no, he did not.

Question: Okay. Who prepared the footnotes?

Answer: I did. (SEC Transcript page 67)

Respondent testified that the decision to book the patent value as income on the balance sheet was the result of a collaborative effort of company principals and an outside advisor (not an accountant), and that he, respondent, had no experience in valuing patents. Respondent's testimony that Gass, as CEO, made the ultimate decision to accept the certificate's stated value is misguided. Ms. Gass may have signed the filing as CEO, but she was based her decision on advise she received from respondent and others. The fact that Saliger did not disagree with the characterization of the patent value as income, or with the valuation of 21 million dollars does not excuse respondent from exercising due diligence and professional judgment in his role as CPA.

8. The SEC found that Saliger had failed to comply with generally accepted accounting principles (GAAP). Saliger settled with the Commission in August of 2002. The SEC also moved against respondent and the company. According to respondent, because he had exhausted the personal financial resources needed to continue to defend himself in the regulatory action, respondent agreed to not practice before the SEC.

9. The stipulation resulted in the issuance by the SEC of a Cease and Desist Order dated February 13, 2003 which is incorporated herein by reference as attachment "A". The SEC order contains findings that respondent prepared the company's financial statements, and that the financial statements failed to follow GAAP, in that respondent did not have a reasonable basis for stating a value of \$21,750,000 for the Russian patent, and materially overstated the company's assets, equity and income. The order further stated that the S-1 contained material misrepresentations of company operations, in that it claimed that Gas & Oil had factories, sales and income when it did not. In addition to an order to cease and desist from committing any violations of the Securities Act of 1933, the SEC denied respondent the privilege of appearing or practicing before the SEC as an accountant. The order acknowledged that respondent did not admit to the truth of the findings contained in the order. The Administrative law Judge's ("ALJ") determination that, "[R]ather, he merely submitted to the jurisdiction of SEC and agreed to the sanction that prohibits him from practicing before the Commission" is not entirely accurate. The Order reads: "...Respondent consents to the entry of this Order Making Findings and Imposing a Cease-and-Desist Order...." Respondent consented not only to the sanction imposed, but also to the entry of the Findings although he did not admit to the truth of the Findings.

10. Respondent, on December 16, 2002, timely reported the action and imminent order of the SEC to the Board as required by the rules of his profession. He has not been the subject of any prior disciplinary action by the board.

11. The S-1 filing was made in October of 2001, prior to the date respondent assumed the position of company CFO. John Perry was listed as the CFO at that time. A "Report of Certified Public Accountant," dated October 11, 2001, signed by Kurt D. Saliger, CPA, accompanied the balance sheets included in the filing that characterized the value of the patent as "other income. While it is true, as pointed out in the Proposed Decision, that "no where in the document is respondent named as the source of any accounting decision, nor is any representation made by him on any subject," by respondent's own admission at the SEC interview, he was in fact a source of several accounting decisions that made their way into the filing.

Respondent also testified at the hearing that he received no compensation for his services for Gas & Oil. However, as Gas & Oil's Chief Financial Officer and Chairman of the Board of Directors, he had an expectation that his accounting services for the company would pay off once the company went public. This is evidenced by his statements during that SEC interview that his services for Gas & Oil were in the form of "sweat equity" and that there were "discussions" that he would become a salaried employee once the company became profitable. (SEC Transcript pages 75-76)

12. The legal conclusion in the Proposed Decision that the complainant should have offered expert testimony on the subject of the standard of care of an accountant is flawed. The statute provides that it is unprofessional conduct when a licensee is sanction by the SEC. The board has met its burden of proof that the respondent was sanction by the SEC. The statute does not require the board re-litigate the underlying facts establishing the basis for the discipline. Respondent was afforded due process in the proceedings before the SEC. He stipulated to the SEC issuing findings and imposing discipline.

LEGAL CONCLUSIONS

1. Complainant has the burden to prove by clear and convincing evidence that respondent has subjected himself to discipline by his actions. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

2. In the First Cause for Discipline, complainant charges that respondent is subject to disciplinary action pursuant to Business and Professions Code section 5100, subdivisions (h) and (l), in that there has been a revocation of his right to practice before "any governmental body or agency," in this case the SEC. This fact is not disputed, and cause for discipline under these subsections is established.

3. In the Second Cause for Discipline, complainant alleges that respondent willfully prepared financial statements that did not conform to GAAP, in violation of Business and Professions Code section 5100, subdivision (g), and California Code of Regulations, title 16, section 58. The board disagrees with the ALJ's legal conclusion that the board failed to meet its burden in proving this cause for discipline because it did not put on an expert witness to testify as to the standard of care relating to the GAAP standards. The SEC Findings specifically found that respondent's practice of

accountancy in the preparation of the financial statements in the filing were "contrary to generally accepted accounting principles ("GAAP")." The SEC Order reads in pertinent part:

D. The registration statement filed by Gas & Oil on October 15, 2001 included financial statements for the year ended December 31, 2000, and for periods ended June 30, 2001, and September 30, 2001. Morinaka prepared these financial statements on behalf of Gas & Oil.

E. In the financial statements for the periods ending June 30 and September 30, 2001, Gas & Oil valued certain technology patents the company had acquired from a Russian scientist based solely on the stated value of \$21.75 million in the "Certified Certificate of Valuation" on Patent No. 1776 issued by the Ministry of Justice of the Russian Federation. This accounting was contrary to generally accepted principles ("GAAP"). GAAP requires that patents be recorded consistent with Accounting Principles Board Opinion No. 17, which states that intangibles should be recorded at cost at date of acquisition. If these costs are not determinable, GAAP requires that the patents be recorded at their fair value. (SEC Order pages 2 and 3)

The ALJ's reasoning that the Board only has a "technical" right to take disciplinary action against respondent's license based on the sanction by the SEC, and, therefore must prove the underlying facts and provide expert testimony to prove that respondent's conduct constitutes a violation of the practice of public accountancy is flawed. The fundamental rules of statutory construction were articulated in *De Young v. San Diego* (1983) 147 Cal.App.3d 11,17. First, the legislative intent should be ascertained in order to effectuate the law's purpose. "Secondly, the provision must be given a *reasonable and common sense interpretation* consistent with the apparent purpose and intention of the lawmakers, practical rather than technical in nature, which upon application will result in wise policy rather than mischief or absurdity. *Id.* At 18. Emphasis added. The legislative intent in allowing the board to discipline a licensee who has been sanctioned by another governmental agency is analogous to the rationale for allowing the Board to take disciplinary action based on a criminal conviction. (See *Arenstein v. California State Board of Pharmacy* (1968) 265 Cal.App2d 179.) As in a criminal matter, respondent was provided due process in the SEC proceedings and was represented by counsel. Applying the ALJ's reasoning in the Proposed Decision, the board would be required to ignore the specific findings in the SEC Order that respondent prepared financial statements that were contrary to generally accepted accounting principles. Furthermore, the SEC Order provided detailed factual findings as well as the legal basis for the findings.

4. Contrary to the legal conclusion reached by the ALJ, the Complainant did prove by clear and convincing evidence that respondent violated Subdivision (j) of

Section 5100 of the Business and Profession Code when he knowingly prepared fraudulent or materially misleading financial statements. The factual finding that respondent did not prepare the financial statements is clearly contradicted by respondent himself in his interview with the SEC as cited in paragraph 7 above. The ALJ opposite conclusion is unexplainable.

5. Complainant did prove by clear and convincing evidence, under the Fourth Cause for Discipline, that pursuant to Business and Professions Code section 5100, subdivision (i), respondent breached his fiduciary responsibility as a director and officer of Gas & Oil by the preparation of fraudulent and materially misleading financial statements.

6. While his agreement to the sanction does not automatically lead to the conclusion that discipline should be imposed, the underlying facts surrounding the basis for the SEC sanction and his testimony in this matter lead to the conclusion that discipline should be imposed. The board also disagrees with the ALJ's description of respondent being candid in the nature of his testimony. When respondent's testimony at the hearing is compared to his testimony at the SEC interview, it is clear that he was not candid at the hearing and in fact changed his story in material respects as has been pointed out above.

In determining what discipline should be imposed upon respondent's license, both mitigating and aggravating factors must be weighed. The mitigation factors in this case are respondent's cooperation with the SEC during its investigation, reporting the SEC order to the board, and lack of a disciplinary record with the board. The factors in aggravation include respondent's participation in the preparation of statements that materially overstated by \$21,750,00 the equity and income of Gas & Oil when in fact the company only had \$5,000 in assets; his lack of candor during the hearing; and the significant potential for public harm to the general public if the SEC had not caught the improprieties and allowed the company to raise \$60,000,000. On balance, the factors clearly demand the revocation of his CPA license.

The consumers of California are entitled to expect that persons holding a license to practice as a Certified Public Accountant should not be allowed to evade the standards and accountability of the profession by claiming that they are only acting as a "bookkeeper."

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ORDER

Based upon Legal Conclusion 1 through 6, the Accusation against respondent Glen Morinaka is sustained and his license is revoked.

It is so ordered.

The effective date of this Order is September 8, 2005

DATED: August 8, 2005

Ronald Blanc
RONALD BLANC
Vice President
California Board of Accountancy

BEFORE THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the matter of the Accusation
against:

Glen Morinaka
912 Summit Place
Monterey Park, CA 91754

Case No.: AC-2004-9

OAH No.: L-2004040078

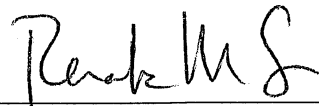
Certified Public Accountant
License No. 48024

Respondent

ORDER OF NONADOPTION OF PROPOSED DECISION

Pursuant to Section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is not adopted. The California Board of Accountancy will decide the case upon record, including the transcript of the hearing held on January 5, 2005, and upon such written argument as the parties may wish to submit. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

IT IS SO ORDERED this 29th day of March, 2005



Renata M. Sos
Board President

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

GLEN MORINAKA,

Respondent.

Case No. AC-2004-9

OAH No. L2004040078

PROPOSED DECISION

On January 5, 2005, Administrative Law Judge Timothy S. Thomas, Office of Administrative Hearings, heard this matter in Los Angeles, California

Gillian E. Friedman, Deputy Attorney General, represented complainant Carol Sigmann, Executive Officer of the California Board of Accountancy (hereinafter the board).

John M. Williamson, Attorney at Law, represented Glen Morinaka (hereinafter respondent).

The matter was submitted on January 5, 2005.

FACTUAL FINDINGS

1. Carol Sigmann filed the Accusation in her official capacity as Executive Officer of the board.

2. Respondent is a Certified Public Accountant who was issued Certificate number 48024 on May 29, 1987, by the board. Respondent graduated from the University of Utah in 1977, with a degree in accounting, and following a brief career as an Internal Revenue Service auditor, was a partner in a private accounting firm from 1977 to 2001. Since that time he has been self-employed as a CPA, working out of his home. Respondent's practice consists of business tax preparation and "management assistance services." Respondent does not perform audits. He is a resident of Monterey Park, California, where he resides with his wife and two children.

3. In approximately July of 2001, respondent became associated with a company called Gas & Oil Technologies, Inc. (hereinafter Gas & Oil), a Delaware corporation, having

been introduced to its CEO, Ingrid Gass, several months earlier. Gas & Oil was run by four individuals, including Gass, respondent, who became chairman of the board of directors, attorney John Williamson and one Sam Kogan, who served as company president. Gass organized Gas & Oil in 2000, and owns controlling interest in the company. On October 15, 2001, the company made its initial filing with the Securities and Exchange Commission (SEC), in order to qualify the company to sell stock publicly.¹ It listed an individual named Perry as Chief Financial Officer (CFO), but Mr. Perry resigned in December 2001, without having performed any substantive services for the company. Respondent became the CFO at that time, although he had assumed the duties of company bookkeeper prior to the filing with the SEC. At no time relevant to this matter did respondent receive any compensation for his work for Gas & Oil.

4. Gas & Oil, which had an initial capitalization of \$5,000 from Ingrid Gass, was formed for the purpose of acquiring patents and developing gas and oil projects. Gas & Oil formed a partnership or joint venture with an individual named P. A. Makarav, who contributed a Russian patent to the venture. The patent involves a new, cleaner and cheaper process to convert crude oil into petrochemicals, and Gas & Oil plans to build factories in this country and produce petrochemicals using the patented process. As of 2002, a prototype factory was being built in Russia, and the first U.S. factory is to be built in Bakersfield, California. Makarav is to receive royalties from sales of the petrochemicals.

5. The Russian patent was acquired by Gas & Oil in the form of a certificate, which on its face stated, "The market cost of the rights on the inventions: \$21,750,000." The value was based on an appraisal done in Russia by the International Scientific Foundation. Respondent testified that Gass, who had contacts in Russia, dispatched consultants to that country to verify the value of the patent. Thereafter, this value was "booked" by Gas & Oil, from an accounting standpoint, as "other income," and added that amount to the company's capitalization picture.

6. The SEC immediately questioned the accounting propriety of showing the patent as "income" on the company books.² The SEC later questioned the filing's representation to the public that Gas & Oil was capitalized beyond the \$5,000 it had in the bank. Eventually, the federal regulators concluded that the patent was not worth anything, absent a domestic appraisal, or until the company generated income. The regulators also took issue with the SEC filing in that it represented that "we develop products in the United States and sell them 'worldwide,'" when in fact the company was not producing or selling anything at that point. Respondent cooperated fully with the SEC investigation, and provided 1,500 pages of documents in a timely fashion. The company voluntarily filed with SEC a notice to stop the S-1 form process. No individual or entity had inquired about the S-1 filing, or offered to invest.

¹ The SEC filing (Form S-1) sought approval for an Initial Public Offering (IPO) to raise \$60,000,000.

² According to respondent, it was initially suggested by the SEC that the patent be booked under "retained earnings" rather than income. But the SEC did not, at that time, question the value placed on the patent.

7. Respondent served as the company bookkeeper, in the absence of a CFO, due to his experience as a CPA. But respondent had never practiced accounting before the SEC, did not intend to ever practice before that agency, and had no special experience or training in SEC accounting or filings. The filing was a joint project of respondent, general counsel and Gass, who signed the form as CEO, and an outside CPA. Prior to respondent's involvement in the company, Gas & Oil had retained the services of CPA Kurt Saliger, who prepared all company financial statements and conducted audits of the company books for the quarters ending December 30, 2000, and June 30, 2001. Saliger was licensed to provide audited financial statements to the SEC. Respondent's main function with regard to the S-1 filing was to provide Saliger with bank statements, the general ledger, the trial balance, adjustments, and copies of contracts, including the contract with Makarav. Respondent testified that the decision to book the patent value as income on the balance sheet was the result of a collaborative effort of company principals and an outside advisor (not an accountant), and that he, respondent, had no experience in valuing patents. According to respondent, Gass, as CEO, made the ultimate decision to accept the certificate's stated value, and had advised Saliger of the steps she had taken to verify the valuation. Saliger did not disagree with the characterization of the patent value as income, or with the valuation of 21 million dollars. Respondent assumed that Saliger, as a part of his engagement, would conduct whatever due diligence he felt necessary to support the financials.

8. The SEC found that Saliger had failed to comply with generally accepted accounting principles (GAAP). Saliger settled with the Commission in August of 2002. The SEC also moved against respondent and the company. According to respondent, because he had exhausted the personal financial resources needed to continue to defend himself in the regulatory action, respondent agreed to not practice before the SEC. This stipulation resulted in the issuance by the SEC of a Cease and Desist Order. Dated February 13, 2003, the SEC order recited that respondent prepared the company's financial statements, and that the financial statements failed to follow GAAP, in that respondent did not have a reasonable basis for stating a value of \$21,750,000 for the Russian patent, and materially overstated the company's assets, equity and income. The order further stated that the S-1 contained material misrepresentations of company operations, in that it claimed that Gas & Oil had factories, sales and income when it did not. In addition to an order to cease and desist from committing any violations of the Securities Act of 1933, the SEC denied respondent the privilege of appearing or practicing before the SEC as an accountant. However, the order also acknowledged that respondent did not admit the findings contained in the order. Rather, he merely submitted to the jurisdiction of SEC and agreed to the sanction that prohibits him from practicing before the Commission.

9. Respondent, on December 16, 2002, timely and voluntarily reported the action and imminent order of the SEC to the board, as required by the rules of his profession. He has not been the subject of any prior disciplinary action by the board.

10. The S-1 filing was made in October of 2001, prior to respondent assuming the role of company CFO. John Perry was listed as the CFO at that time. The S-1 document stated, "The information in this preliminary prospectus is not complete and may be changed

... This preliminary prospectus is not an offer to sell.” A “Report of Certified Public Accountant,” dated October 11, 2001, signed by Kurt D. Saliger, CPA, accompanied the balance sheets included in the filing that characterized the value of the patent as “other income.” In other words, the financial reports for Gas & Oil that were part of the filing went out over the signature of Saliger as CPA, not respondent. While the S-1 accurately describes respondent as a CPA in the required biographical section of the filing, no where in the document is respondent named as the source of any accounting decision, nor is any representation made by him on any subject.

11. Complainant offered no expert testimony on the subject of the standard of care of an accountant. According to respondent’s testimony, GAAP requires that a patent should be recorded on the books at the lower of cost or market value. Since there was no cost to Gas & Oil for the patent as of the date of the SEC filing, the company’s officers reasoned that it was appropriate to use the value established by the Russian Ministry of Justice. One can appreciate the concern of the SEC that were a public offering to go forward based upon the S-1 filed by Gas & Oil, the potential existed for the public to have been misled by the treatment of the patent’s supposed value. But it does not automatically follow, without the benefit of expert testimony on the standard of care, that respondent violated his professional duties as a CPA by virtue of his position as company director and his actions as bookkeeper. On the other hand, respondent, the only witness who testified at this hearing, impressed as an intelligent, thoughtful and competent accountant, and appeared forthright in all respects.

LEGAL CONCLUSIONS

1. Complainant has the burden to prove by clear and convincing evidence that respondent has subjected himself to discipline by his actions. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

2. In the First Cause for Discipline, complainant charges that respondent is subject to disciplinary action pursuant to Business and Professions Code section 5100, subdivisions (h) and (l), in that there has been a revocation of his right to practice before “any governmental body or agency,” in this case the SEC. This fact is not disputed, and cause for discipline under these subsections is established.

3. In the Second Cause for Discipline, complainant alleges that respondent willfully prepared financial statements that did not conform to GAAP, in violation of Business and Professions Code section 5100, subdivision (g), and California Code of Regulations, title 16, section 58. But the settlement of the SEC matter, which specifically recited that respondent did not admit the allegations contained in the order, does not represent clear and convincing evidence of a willful violation of any professional standard of practice. Complainant offered no expert testimony. Her case in chief was essentially limited to the fact of the SEC order and sanction imposed. No authority was cited that the SEC order carries the same weight as a criminal conviction, which would deny respondent the option of disputing the factual basis of the underlying case. (See *Arenstein v. California State Board of Pharmacy* (1968) 265 Cal.App.2d 179.) Further, the uncontradicted evidence was that

respondent acted only as a bookkeeper for Gas & Oil, and not as a CPA. The activities of a bookkeeper are exempt from the permit requirements for practicing public accountancy so long as the bookkeeper does not make his reports, balances or statements over his name as having been prepared or examined by a CPA. (Bus. & Prof. Code, § 5052.) There was no evidence introduced in this matter that respondent issued any bookkeeping document over his name as a CPA.

4. Complainant has not proved under the Third Cause for Discipline by clear and convincing evidence that, pursuant to Business and Professions Code section 5100, subdivision (j), respondent knowingly prepared fraudulent or materially misleading financial statements. The uncontradicted evidence in this hearing was that respondent did not act in a capacity as CPA for Gas & Oil. Also, respondent did not prepare the financial statements. The evidence is that Mr. Saliger performed that task for the company.

5. Complainant did not prove by clear and convincing evidence, under the Fourth Cause for Discipline, that pursuant to Business and Professions Code section 5100, subdivision (i), respondent breached his fiduciary responsibility as a director and officer of Gas & Oil by the preparation of fraudulent and materially misleading financial statements.

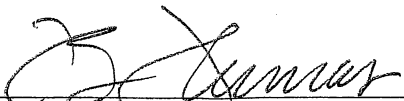
6. Complainant has established the technical right to discipline respondent's license due to the stipulated sanction that respondent not practice before the SEC. Respondent has never practiced before the SEC, and testified that he did not intend to ever practice before the SEC. His agreement to the sanction does not, therefore, lead to the conclusion that his California accountancy license should be disciplined. As his counsel argued, many mitigating factors are present, including the candid nature of his client's testimony, his complete cooperation with the SEC, his voluntary reporting of the SEC order to the board, and a lack of any disciplinary record with the board. There are no factors in aggravation. Under these circumstances, it would be unfair and unduly harsh to impose discipline.

ORDER

1. Based upon Legal Conclusion 2, the Accusation against respondent Glen Morinaka is sustained.

2. Based upon Legal Conclusions 3 through 6, no discipline is imposed.

DATED: February 4, 2005


TIMOTHY S. THOMAS
Administrative Law Judge
Office of Administrative Hearings

1 BILL LOCKYER, Attorney General
of the State of California
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6 Attorneys for Complainant

7
8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2004-9

12 GLEN MORINAKA
912 Summit Place
13 Monterey Park, CA 91754

A C C U S A T I O N

14 Certified Public Accountant Certificate
No. CPA 48024

15 Respondent.
16

17
18 Complainant alleges:

19 **PARTIES**

20 1. Carol Sigmann (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the California Board of Accountancy, Department of
22 Consumer Affairs.

23 2. On or about May 29, 1987, the California Board of Accountancy issued
24 Certified Public Accountant Certificate No. CPA 48024 to Glen Morinaka (Respondent). The
25 Certified Public Accountant Certificate was in full force and effect at all times relevant to the
26 charges brought herein and will expire on December 31, 2004, unless renewed.

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JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (Board), Department of Consumer Affairs, under the authority of the following laws.

4 Business and Professions Code section 5100 states:

"The expiration, cancellation, forfeiture, or suspension of a license by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license."

5. Business and Professions Code section 5100 states:

"After notice and hearing the board may revoke, suspend or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct which includes, but is not limited to, one or any combination of the following causes:

....

"(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

"(h) Suspension or revocation of the right to practice before any governmental body or agency.

"(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

"(j) Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.

....

"(l) The imposition of any discipline, penalty, or sanction on a registered public accounting firm or any associated person of such firm, or both, or on any other holder of a permit, certificate, license, or other authority to practice in this state, by the Public Company

///

1 Accounting Oversight Board or the United States Securities and Exchange Commission, or their
2 designees under the Sarbanes-Oxley Act of 2002 or other federal legislation."

3 6. California Code of Regulations, title 16, section 58, provides that licensees
4 engaged in the practice of public accountancy shall comply with all applicable professional
5 standards, including but not limited to generally accepted accounting principles and generally
6 accepted auditing standards.

7 7. Business and Professions Code section 5107, subdivision (a), states, in
8 pertinent part:

9 "The executive officer of the board may request the administrative law judge, as
10 part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or
11 certificate found guilty of unprofessional conduct in violation of subdivisions (b), (c), (i) [now
12 subdivision (j)], or (j) [now subdivision (k)] of Section 5100, or involving a felony conviction in
13 violation of subdivision (a) of Section 5100, or involving fiscal dishonesty in violation of
14 subdivision (h) of Section 5100 [now subdivision (i) of Section 5100], to pay to the board all
15 reasonable costs of investigation and prosecution of the case, including, but not limited to,
16 attorneys' fees. The board shall not recover costs incurred at the administrative hearing."

17 FIRST CAUSE FOR DISCIPLINE

18 (Suspension or revocation of the right to practice before any governmental body or agency.)

19 8. Respondent is subject to disciplinary action under Business and
20 Professions Code section 5100, subdivision (h) and (i) in that on or about February 13, 2003, the
21 Security and Exchange Commission ("SEC") issued an "Order Making Findings and Imposing a
22 Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Imposing
23 Sanctions Pursuant to Rule 102(e) of the Commission's Rules of Practice as to Glen Morinaka,
24 CPA" (hereinafter referred to as "Order") against Respondent. By the Order, Respondent agreed
25 that he would cease and desist from committing or causing any violation of Section 17(a) of the
26 Securities Act and that he was denied the privilege of appearing or practicing before the SEC as
27 an accountant. The Order included the following factual findings:

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1 a. At the time of the incident that is the subject of the Order, Respondent,
2 was a California Certified Public Accountant and served as the Chief Financial Officer and
3 Chairman for the Board of Directors of the entity Gas and Oil Technologies, Inc, a Delaware
4 corporation, headquartered in Woodland Hills, California ("Gas & Oil").

5 b. On October 15, 2001, Gas & Oil filed with the SEC financial statements
6 (Form S-1) for the purpose of raising \$60 million through the sale of common stock at Gas &
7 Oil's initial offering. Gas & Oil has no public market for securities, but applied to have its
8 common stock quoted on NASDAQ under the symbol "GAOL"

9 c. Respondent prepared the subject financial statements on behalf of Gas &
10 Oil, which included statements for the year ending December 31, 2000, and for periods ending
11 June 30, 2001 and September 30, 2001. The accounting used in the financial statements for the
12 periods that ended June 30, 2001 and September 30, 2001 ("subject financial statements") was
13 contrary to generally accepted accounting principles ("GAAP") as follows:

14 (1) The subject financial statements included valuations of technology patents
15 in the sum of \$21.75 million without any reasonable basis for doing so. This valuation materially
16 overstated Gas & Oil's assets, equity and income.

17 (2) The subject financial statements failed to state that the patents had not
18 been filed or registered in any country, other than Russia.

19 (3) The subject financial statements contained affirmative material
20 misrepresentations, in that they referred to Gas & Oil's factories and its sales of product, but Gas
21 & Oil had no factories and had never made a sale. Gas & Oil's statements further provided that
22 net cash was used in the amount of \$8.4 million for operating activities for nine month, ending in
23 September 30, 2001, and that the company had used net cash in the amount of \$21.7 million, in
24 investing activities for the same period, when, in fact, the company had no cash.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Willful Violation of the Law)

3 9. Respondent is subject to disciplinary action under Business and
4 Professions Code section 5100, subdivision (g); in conjunction with California Code of
5 Regulations, title 16, section 58, in that Respondent willfully prepared financial statements that
6 did not conform to generally accepted accounting principles, as more fully set forth above in
7 paragraph 8.

8 THIRD CAUSE FOR DISCIPLINE

9 (Knowingly Prepared Fraudulent or Materially Misleading Financial Statements)

10 10. Respondent is subject to disciplinary action under Business and
11 Professions Code section 5100, subdivision (j), in that Respondent knowingly prepared,
12 fraudulent, or materially misleading financial statements, on behalf of Gas & Oil Technologies,
13 on registration statement Form S-1 for the periods ending June 30, 2001, and September 30,
14 2001, as more fully set forth above in paragraphs 8 and 9.

15 FOURTH CAUSE FOR DISCIPLINE

16 (Breach of Fiduciary Responsibility)

17 11. Respondent is subject to disciplinary action under Business and
18 Professions Code section 5100, subdivision (i), in that Respondent breached his fiduciary
19 responsibility as an officer and director of Gas & Oil when he prepared fraudulent and materially
20 misleading financial statements that were filed with the SEC as more fully set forth above in
21 paragraphs 8 through 10.

22
23 PRAYER

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein
25 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

26 1. Revoking, suspending, or otherwise imposing discipline upon Certified
27 Public Accountants Certificate No. CPA 48024, issued to Glen Morinaka;

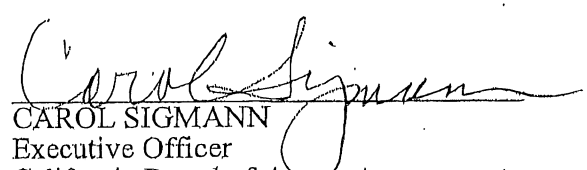
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2. Ordering Glen Morinaka to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107;

3. Taking such other and further action as deemed necessary and proper.

DATED: March 2, 2004


CAROL SIGMANN
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California

Complainant

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